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OFFICE OF PETITIONS

In re Application of
Walter Solomon
Application No. 09/648,930
Filed: August 25, 2000
Attorney Docket No. P1005

DECISION ON PETITION

This is a decision on the paper titled "Petition to Revive Allegedly Unintentionally Abandoned Application Under 37 CFR 1.137(b)", filed June 14, 2002, which is also being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition to revive under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to properly reply to the Notice to File Missing Parts of Nonprovisional Application, mailed October 18, 2000. This Notice set a two month period for reply for applicant to submit the statutory basic filing fee, an oath or declaration, and a surcharge for late filing of the oath or declaration.¹ Extensions of time were available under 37 CFR 1.136(a). However, no extensions of time having been obtained and no oath or declaration with surcharge having been received, the above-identified application became abandoned on December 19, 2000. The mailing of this decision precedes the mailing of a Notice of Abandonment.

A Revocation and Power of Attorney was filed on May 29, 2001 (Certificate of Mailing dated May 23, 2001). Apparently under the impression that this constituted a reply to the Notice to File Missing Parts of Nonprovisional Application, this Office mailed a Notice of Incomplete Reply (Nonprovisional) on November 20, 2001.² Applicant responded to the Notice of Incomplete Reply

¹ Office PALM database records indicate that the statutory basic filing fee with the filing of the application on August 25, 2000. Therefore, to the extent that the Notice to File Missing Parts of Nonprovisional Application indicates that the filing fee was not received, the Notice appears to have been issued in error.

² The Notice of Incomplete Reply (Nonprovisional) stated, "[t]he U.S. Patent and Trademark Office has received your reply on 5/29/2001 to the Notice to File Missing Parts (Notice) mailed 10/18/2000 and it has been entered into the nonprovisional application."

by filing a declaration (with the surcharge for its late filing) on January 18, 2002 (Certificate of Mailing dated November 29, 2001). However, by then the application had already gone abandoned. The instant petition is being filed to close the gap in prosecution.

Petition to Withdraw the Holding of Abandonment

Petitioner states that he never received the Notice of Nonprovisional Application. To establish nonreceipt of an Office action, a practitioner must: (1) state that the Office action was not received; (2) attest to the fact that a search of the file jacket and docket records indicates nonreceipt; and (3) include a copy of the docket records where the nonreceived Office action would have been received had it been received and docketed.³ Here, petitioner has not met requirement (3). Accordingly, the holding of abandonment can not be withdrawn.

Petition to Revive

Petitioner has met the requirements for a grantable petition under 37 CFR 1.137(b). Petitioner authorized payment of the petition fee to his deposit account and made the proper statement of unintentional delay. The required reply in the form of a declaration and surcharge for its late filing were previously filed on January 18, 2002.

Deposit Account No. 50-1270 has been charged the petition fee of \$640 as authorized.

The application file is being forwarded to the Office of Initial Patent Examination for completion of pre-examination processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0272.



Cliff Congo
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for Patent Examination Policy

³ See MPEP 711.03(c)(II).